

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 3. AGRICULTURE

#### CHAPTER 4. DEPARTMENT OF AGRICULTURE

#### PLANT SERVICES DIVISION

#### PREAMBLE

- 1. Sections Affected**

R3-4-240	<b><u>Rulemaking Action</u></b>
R3-4-241	Amend
	Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 3-107(A)(1)

Implementing statutes: A.R.S. §§ 3-201.01 and 3-211
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 8 A.A.R. 3578, August 30, 2002
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Sherry D. Blatner, Rules Specialist

Address: Arizona Department of Agriculture  
1688 W. Adams, Room 235  
Phoenix, AZ 85007

Telephone: (602) 542-0962

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E-mail: sherry.blatner@agric.state.az.us
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**

Amendments to R3-4-240 expand the area under quarantine and clarify existing language. Amendments to R3-4-241 revise the definition of the pest, modify the area under quarantine by listing infested counties rather than entire states, and update the list of regulated commodities.

The Department committed to update these rules in the 1998 Five-year Review Report presented by the Plant Services Division to the Governor's Regulatory Review Council.
- 6. A reference to any study relevant to the rule that the agency proposes to rely on in its evaluation of or justification for the proposed rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

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**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**8. The preliminary summary of the economic, small business, and consumer impact:**

A. *The Arizona Department of Agriculture.*

The Department will incur modest expenses related to training staff and educating the regulated community on the amendments.

B. *Political Subdivision.*

Other than the Department, no political subdivision is affected by this rulemaking.

C. *Businesses Directly Affected By the Rulemaking.*

R3-4-240: Out-of-state vendors that ship regulated commodities into Arizona will need to become familiar with the revised quarantine area.

R3-4-241: Out-of-state vendors that ship palm trees and other plant material into Arizona, and Arizona nurseries that place orders for out-of-state palm trees and other plant material, will need to become familiar with the updated quarantine areas and regulated commodities.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Sherry D. Blatner, Rules Specialist

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**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

The Department of Agriculture will schedule a public hearing if a written request for a public hearing is made to the person in item #4.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

None

**13. The full text of the rules follows:**

**TITLE 3. AGRICULTURE**

**CHAPTER 4. DEPARTMENT OF AGRICULTURE**

**PLANT SERVICES DIVISION**

**ARTICLE 2. QUARANTINE**

Section

R3-4-240. ~~Plum Curculio and Apple Maggot Pests~~ Apple Maggot and Plum Curculio

R3-4-241. ~~Lethal Yellowing and Lethal Decline of Palms~~

**ARTICLE 2. QUARANTINE**

**R3-4-240. ~~Plum Curculio and Apple Maggot Pests~~ Apple Maggot and Plum Curculio**

~~A. Jurisdiction. The entry of covered commodities into the state of Arizona shall be governed by the following rule.~~

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**B.A.** ~~Pests Covered. Plum, Curculio, Conotrachelus nenuphar and Apple Maggot, Rhagoletis pomonella Definitions. The following term applies to this Section:~~

~~“Pest” means apple maggot, *Rhagoletis pomonella* (Walsh), and plum curculio, *Conotrachelus nenuphar*.~~

**C.B.** ~~Areas Area Under Quarantine.~~

- ~~1. All states, territories, and districts of the United States, east of the western borders of the states of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma and Texas.~~
- ~~2. The infested areas in the state of California, including the following counties:  
Del Norte Mendocino Trinity  
Humboldt Siskiyou  
Lake Sonoma~~
- ~~3. Including the state of Colorado.~~
- ~~4. The infested area in the state of Idaho, including the county of Franklin.~~
- ~~5. The infested areas in the state of Oregon, including the following counties:  
Benton Curry Lane Polk  
Clackamas Douglas Lincoln Tillamook  
Clatsop Hood River Linn Yamhill  
Colombia Jackson Marion Washington  
Coos Josephine Multnomah Wasco~~
- ~~6. The infested areas in the state of Utah, including the following counties:  
Box Elder Davis Utah  
Cache Salt Lake Weber~~
- ~~7. The infested areas in the state of Washington, including the following counties:  
Clark Klickitat Pacific  
Cowlitz Lewis Skamania~~

**D.C.** ~~Commodities Covered Regulated Commodities. All The fresh fruit of the following plants: apple, apricot, cherry, hawthorn, nectarine, peach, pear, plum, prune and quince.~~

~~*Chaenomeles* spp. (Quince).~~

~~*Crataegus* spp. (Hawthorne).~~

~~*Malus* spp. (Apple).~~

~~*Prunus* spp. (Cherry, Nectarine, Peach, Plum, and Prune), and~~

~~*Pyrus communis* spp. (Pear).~~

**E.D.** ~~Restrictions.~~

- ~~1. Commodities covered under subsection (D) which are produced in or shipped from the areas under quarantine are prohibited entry into the state of Arizona unless each lot or shipment is accompanied by an official certificate. This certificate shall be signed by an agricultural official of the state from which it is shipped and shall indicate compliance with subsection (E)(1)(a), (b), or (c):~~
  - ~~a. Repacked commodities are admissible from quarantined areas if each lot or shipment is officially certified to have been grown outside the area under quarantine and that continued identity has been maintained while within the quarantined area before reshipment to any point in this state. Such certificates shall set forth the state in which the commodities were grown, point of repacking and reshipment, amount and kind of commodities comprising the lot or shipment, and the name and address of the shipper and consignee.~~
  - ~~b. Apples which have been exposed to controlled atmosphere storage may be admitted into Arizona if all the following requirements are met:~~
    - ~~i. The exposure is for a period of 90 continuous days.~~
    - ~~ii. The temperature is maintained at 38° Fahrenheit continuously.~~
    - ~~iii. The controlled atmosphere facility is approved by the Department of Agriculture of the state in which the facility is located.~~
    - ~~iv. A certificate, signed by an agricultural inspector of the Department of Agriculture of the state in which the facility is located, attesting to the provisions of the 3 preceding subdivisions.~~
  - ~~c. Commodities shall be held in cold storage for a continuous period of 40 days or more. In cold storage, during the treatment period, means that the temperature within the storage room shall be maintained at 32° Fahrenheit or less. Commodities so treated shall be admitted into Arizona provided each lot or shipment is accompanied by an official certificate indicating compliance with the minimum requirements of this subsection.~~
- ~~2. Exemptions:~~
  - ~~a. No restrictions are placed by this rule on the entry into this state of fruits which are already frozen solid upon arrival in Arizona and are under refrigeration to assure their solid frozen state.~~
  - ~~b. Reshipments in original containers from quarantine areas of commodities grown outside the area under quarantine, provided commodities are in the original, unopened containers, each bearing labels or other identifying~~

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marks evidencing origin outside the quarantine area. These shipments may be reshipped into Arizona from any point within the quarantined areas and no certificate is required.

- e. ~~A special permit may be issued by the Commission to allow shipment into Arizona of covered commodities from the areas under quarantine in the states of Idaho, Oregon, Utah and Washington because of the Apple Maggot. Commercial apple fruit grown in those counties in which there is an active Apple Maggot eradication program, including trapping for the Apple Maggot in commercial orchards, and in which Apple Maggot has not been detected in those commercial orchards.~~

1. A regulated commodity that is produced in or shipped from an area under quarantine is prohibited entry into Arizona unless each lot or shipment is accompanied by a certificate issued by an official of the state of origin, affirming compliance with one of the following:
  - a. The commodity was held in an approved controlled atmosphere storage facility for a minimum of 90 continuous days at a maximum temperature of 38° F, or
  - b. The commodity was held in an approved cold storage facility for a minimum of 40 continuous days at a maximum temperature of 32° F.
2. The Director shall issue a permit to allow a regulated commodity from an area under quarantine to enter Arizona without treatment as prescribed in subsection (D)(1) if the commodity originates from an area:
  - a. That is known to be pest-free, or
  - b. That is infested, but where an on-going pest eradication program approved by the Director exists.

~~**F.E.** Disposition of Violations violations. Commodities covered by this rule which are shipped into the state of Arizona or moved within the state of Arizona in violation of this rule shall, at the option and expense of the owner or authorized agent, be sent out of the state or destroyed. This disposition shall be under the direction of the Director of the Commission of Agriculture and Horticulture and supervision of an Inspector of the Commission. A regulated commodity shipped into Arizona in violation of this Section shall be destroyed or transported out-of-state at the owner's expense.~~

**R3-4-241. Lethal Yellowing and Lethal Decline of Palms**

~~**A.** Jurisdiction. The entry of commodities covered into the state of Arizona shall be governed by the following rule.~~

~~**B.A.** Pests covered. Pests under this rule are pathogens of palm trees which are identified as mycoplasma-like organisms that cause Lethal Yellowing and Lethal Decline of palm trees, and the vector of these mycoplasma-like organisms, which is a leaf hopper, *Myndus crudus*. Definitions. The following term applies to this Section:~~

~~“Pest” means:~~

~~A pathogen of palm trees that is identified as a non-cutivable mollicute causing lethal yellowing of palms, or *Myndus crudus*, a leafhopper that vectors the pathogen.~~

~~**C.B.** Areas Area under quarantine. ~~The entire states of Texas and Florida:~~~~

1. ~~In the state of Florida, the counties of, Broward, Collier, Hendry, Lee, Martin, Miami-Dade, Monroe, and Palm Beach.~~
2. ~~In the state of Texas, the counties of, Cameron, Hidalgo, and Willacy.~~

~~**D.C.** Commodities covered Regulated commodities. All propagative parts of the following plants, except seed:~~

1. ~~St. Augustine grass, *Stenotaphrum secundatum*, and all parts thereof except the seed.~~
2. ~~All susceptible palm trees and all parts thereof except the seed including the following:~~
  - a. ~~*Aiphanes lindeniana*,~~
  - b. ~~*Allagoptera arendria*,~~  
~~*Andropogon virginicus* (Broomsedge),~~
  - c. ~~*Arenga* spp. *engleri*, Sugar Palm or Dwarf Sugar Palm~~
  - d. ~~*Arikuryroba schizophulla*, Arikury Palm~~
  - e. ~~*Borassus flabellifer* (Palmyra Palm), Wine Palm~~
  - f. ~~*Caryota* spp., *mitis* (Cluster Fishtail Palm), Dwarf Fishtail  
*Caryota rumphiana* (Giant Fishtail Palm),  
*Chelyocarpus chuco*,~~
  - g. ~~*Chrysalidocarpus eabadaea*, *cabadae*, syn. *Dypsis cabadae* (Cabada Palm),~~
  - h. ~~*Cocos nucifera*, (Coconut Palm),~~
  - i. ~~*Corypha elata*, (Buri Palm),  
*Cynodon dactylon* (Bermuda Grass),  
*Cyperus* spp. (Sedges),~~
  - j. ~~*Dictyosperma album*, (Princess Palm), Hurricane Palm  
*Eremochloa ophiuroides* (Centipede Grass),~~
  - k. ~~*Gaussia attenuata* spp., (Puerto Rican Palm), Lume Palm~~
  - l. ~~*Howea belmoreana* spp., Sentry Palm, (Belmore Sentry Palm),~~
  - m. ~~*Latania* spp., (Latan Palm),~~
  - n. ~~*Livistonia* spp., *Livistonia chinensis* (Chinese Fan Palm), Australian Fan Palm~~

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- Livistona rotundifolia* (Javanese Fan Palm).
- o: *Mascarena* spp., *verschaffeltii* (Spindle Palm), ~~Bottle Palm~~
- p: *Nannorrhops ritchiana*, (Mazari Palm),
- q: *Neodypsis decaryi*, syn. *Dypsis decaryi* (Triangle Palm),  
*Panicum purpurascens* (Para Grass),  
*Panicum bartowense*,  
*Panicum utilis* (Screw Pine),  
*Paspalum notatum* (Bahia Grass),
- r: *Phoenix canariensis*, (Canary Island Date Palm),
- s: *Phoenix dactylifera*, ~~True~~ (Date Palm),
- t: *Phoenix reclinata*, (Sengal Date Palm),
- u: *Phoenix rupicola*, (Cliff Date Palm),
- v: *Phoenix zeylanica*, ~~Ceylon Date Palm~~
- w: *Phoenix sylvestris*, (Wild Date Palm), ~~Silver Date Palm~~  
*Phoenix zeylanica* (Ceylon Date Palm),
- x: *Polyandrococos caudescens*,
- y: *Pritchardia* spp., ~~Kona Palm, Hawaiian Palm, Fiji Island Palm~~
- z: *Ravenea* spp. *hildebrandtii*,  
*Stenotaphrum secundatum* (St. Augustine Grass),  
*Syagrus schizophylla*
- aa: *Trachycarpus* spp., *fortunei* Chinese (Windmill Palm), ~~Windmill Palm~~
- bb: *Veitchia* spp., ~~Christmas Palm, Manilla Palm, Montgomery Palm and~~  
*Zoysia* spp. (Zoysia Grass).

~~**E.D.** Restrictions. All covered commodities~~ A regulated commodity listed in subsection ~~(D)~~ of this rule is prohibited entry into Arizona when grown in, or shipped from, ~~the quarantined areas~~ an area listed in subsection ~~(C)~~ of this rule (B).

~~**F.E.** Disposition of violations. Any commodities covered in subsection (D) of this rule which are shipped into the state of Arizona or moved within the state of Arizona and are in violation of this rule shall, at the option and expense of the owner or authorized agent, be sent out of the state or destroyed. This disposition shall be under the direction of the Director and supervision of an Inspector of the Commission. A regulated commodity shipped into Arizona in violation of this Section shall be destroyed or transported out-of-state at the owner's expense.~~

## NOTICE OF PROPOSED RULEMAKING

### TITLE 3. AGRICULTURE

#### CHAPTER 4. DEPARTMENT OF AGRICULTURE

##### PLANT SERVICES DIVISION

###### PREAMBLE

- | <u>1. Sections Affected</u>  | <u>Rulemaking Action</u>  |
|--|---|
| R3-4-246   | Amend   |
| <u>2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):</u> |   |
| Authorizing statute: A.R.S. § 3-107(A)(1)  |   |
| Implementing statutes: A.R.S. §§ 3-201.01 and 3-211  |   |
| <u>3. A list of all previous notices appearing in the Register addressing the proposed rule:</u>   |   |
| Notice of Rulemaking Docket Opening: 8 A.A.R. 1110, March 15, 2002   |   |
| <u>4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:</u>   |   |
| Name:  | Sherry D. Blatner, Rules Specialist   |
| Address:   | Arizona Department of Agriculture<br>1688 W. Adams, Room 235<br>Phoenix, AZ 85007 |

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**5. An explanation of the rule, including the agency's reasons for initiating the rule:**

This rulemaking redefines the pest, limits the area under quarantine to certain counties in Florida and to the Commonwealth of Puerto Rico, and updates the list of regulated commodities. Unnecessary language pertaining to treating infested areas or surveying uninfested areas is deleted. Entry requirements for regulated commodities are clarified.

The Department committed to update this rule in the 1998 Five-year Review Report presented by the Plant Services Division to the Governor's Regulatory Review Council.

**6. A reference to any study relevant to the rule that the agency proposes to rely on in its evaluation of or justification for the proposed rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**8. The preliminary summary of the economic, small business, and consumer impact:**

A. *The Arizona Department of Agriculture.*

The Department will incur modest expenses related to training staff and educating the regulated community on the amendments.

B. *Political Subdivision.*

Other than the Department, no political subdivision is affected by this rulemaking.

C. *Businesses Directly Affected By the Rulemaking.*

Companies that ship regulated commodities to Arizona will need to become familiar with the revised area under quarantine, list of regulated commodities, and treatment schedule.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

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**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

The Department of Agriculture will schedule a public hearing if a written request for a public hearing is made to the person in item #4.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

None

13. The full text of the rules follows:

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE

PLANT SERVICES DIVISION

ARTICLE 2. QUARANTINE

Section

R3-4-246. Caribbean Fruit fly-pests Fly

ARTICLE 2. QUARANTINE

**R3-4-246. Caribbean Fruit fly-pests Fly**

**A.** Notice of quarantine: It has been determined that there are economically dangerous fruit fly pests not known to occur in the state of Arizona; that these pests are a serious threat to the agricultural industry of the state of Arizona and to the thousands of ornamental fruit trees and garden plants in home plantings. In order to prevent the introduction into the state of Arizona, and the spread within the state of these dangerous pests, it is hereby ordered and declared that the entry of quarantined articles into the state of Arizona, or the movement within the state, shall be governed by the following rule.

**B.A.** Pests: Any species of the fruit fly genera *Anastrepha*, *Ceratitis* or *Dacus*, belonging to the Family Tephritidae. Definitions. The following term applies to this Section:

“Pest” means all life stages of the Caribbean fruit fly, *Anastrepha suspensa*.

**C.B.** Area under quarantine: The quarantined area shall include all areas outside of the state of Arizona and any areas found infested within the state of Arizona. An infested area may be declared by the State Entomologist within the area under quarantine whenever any insect covered by this rule becomes established in any such area, and represents a known infestation. Any infested area within the area under quarantine as declared by the State Entomologist for any pest covered by this rule, together with a list of host commodities which may harbor or be the carrier of such pest, shall be incorporated herein and made a part of this rule.

1. In the state of Florida, the counties of, Alachua, Brevard, Broward, Charlotte, Citrus, Collier, DeSoto, Duval, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lake, Lee, Manatee, Martin, Miami-Dade, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, St. Johns, St. Lucie, Sarasota, Seminole, Sumter, and Volusia.

2. The Commonwealth of Puerto Rico.

**D.C.** Commodities covered: Regulated commodities. All commodities listed in this rule which have been declared by the State Entomologist as capable of being infested by, or harboring, any pest covered by this rule.

1. The fresh fruit of the following plants:

*Actinidia chinensis* (Kiwi),  
*Annon glabra* (Pond Apple),  
*Annona hybrid*,  
*Annona squamosa* (Sugar Apple),  
*Atalantia citriodes*,  
*Averrhoa carambola* (Carambola),  
*Blighia sapida* (Akee),  
*Canella winteriana* (Wild Cinnamon),  
*Capsicum frutesceus* (Bell Pepper),  
*Carica papaya* (Papaya),  
*Carissa grandiflora* (Natal Plum),  
*Casimiroa edulis* (White Sapote),  
*Chrysobalanus icaco* (Cocoplum),  
*Citrus aurantiifolia* (Lime),  
*Citrus aurantium* (Sour Orange),  
*Citrus limonia* (Rangpur Lime),  
*Citrus nobilis* ‘unshu’ x *Fotunella* sp. (Jack Orangequat),  
*Citrus paradisi* (Grapefruit),  
*Citrus paradisi* x *C. reticulata* (Tangelo),  
*Citrus reticulata* (Tangerine),  
*Citrus sinensis* (Sweet Orange),  
*Citrus sinensis* x *C. reticulata* (Temple Orange),

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*Clausena lansium* (Wampi).  
*Dimocarpus longan* (Longan).  
*Diospyros blancoi* (Velvet Apple or Velvet Persimmon).  
*Diospyros khaki* (Japanese Persimmon).  
*Dovyalis caffra* (Kei Apple).  
*Dovyalis hebecarpa* (Ceylon Gooseberry).  
*Drypetes lateriflora* (Guiana Plum).  
*Eriobotrya japonica* (Loquat).  
*Eugenia aggregata* (Cherry of the Rio Grande).  
*Eugenia brasiliensis* (Grumichama).  
*Eugenia coronata*.  
*Eugenia ligustrina*.  
*Eugenia luschnathiana* (Pitomba).  
*Eugenia uniflora* (Surinam Cherry).  
*Ficus altissima*.  
*Ficus carica* (Fig).  
*Flacourtia indica* (Governor's Plum).  
*Fortunella* spp. (Kumquat).  
*Garcinia livingstonei* (Imbe).  
*Garcinia xanthochymus*.  
*Litchi chinensis* (Lychee).  
*Lycopersicon esculentum* (Tomato).  
*Malpighia glabra* (Barbados Cherry).  
*Malus sylvestris* (Apple).  
*Mangifera indica* (Mango).  
*Manilkara jaimiqui* spp. *Emarginata* (Wild Dilly).  
*Manilkara roxburghiana*.  
*Manilkara zapota* (Sapodilla).  
*Momordica charantia* (Wild Balsam Apple).  
*Muntingia calabura* (Calbur).  
*Murraya paniculata* (Orange Jasmine).  
*Myciaria cauliflora* (Jaboticaba).  
*Myrcianthes fragrans*.  
*Myricaria glomerata*.  
*Persea americana* (Avocado).  
*Pimenta dioica* (Allspice).  
*Pouteria campechiana* (Egg Fruit).  
*Prunus persica* (Nectarine).  
*Prunus persica* (Peach).  
*Pseudanmomis umbellulifera*.  
*Psidium* spp. (Guava).  
*Punica granatum* (Pomegranate).  
*Pyrus cummunis* (Pear).  
*Pyrus pyrifolia* (Japanese Pear).  
*Pyrus pyrifolia* x *Pyrus communis* (Kieffer Pear).  
*Rheedia aristata*.  
*Rubus hybrid* (Blackberry).  
*Severinia buxifolia* (Box Orange).  
*Spondias cytherea* (Otaheite Apple).  
*Synsepalum dulcificum* (Miracle Fruit).  
*Syzygium cumini* (Jambolan Plum).  
*Syzygium jambos* (Rose Apple).  
*Syzygium samarangense* (Java Apple).  
*Terminalia catappa* (Tropical Almond).  
*Terminalia muelleri*.  
*Trevisia palmata*.  
*Triphasia trifolia* (Limeberry).  
X *Citrofortunella floridana* (Limequat), and  
X *Citrofortunella mitis* (Calamondin).



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2. Soil or planting media within the drip area of plants producing, or that have produced, a regulated commodity.

**E.D.** Restrictions: All commodities listed in this rule shall be admitted to the state of Arizona from any infested area declared by the State Entomologist, only when each lot or shipment meets the requirements listed in subsections (F) or (G) of this rule.

1. A regulated commodity produced in or shipped from an area under quarantine is prohibited entry into Arizona unless each lot or shipment is accompanied by a certificate issued by an official of the state of origin, affirming compliance with one of the following:

a. Citrus fruit (*Citrus* spp., *Poncirus* spp., and *Fortunella* spp.) has been fumigated with methyl bromide ("Q" label only) for a minimum of two hours under the following conditions:

<u>Pulp Temperature</u>	<u>Rate per 1000 cu. ft.</u>
<u>No less than 60° F to 79° F</u>	<u>3 pounds</u>
<u>80° F or above</u>	<u>2 1/2 pounds</u>

b. Non-citrus fruit has been treated in compliance with a treatment plan approved by the Director.

2. The following regulated commodities produced in or shipped from an area under quarantine may enter Arizona without treatment if each lot or shipment was produced using a conventional method and is commercially packed:

- a. Avocado,
- b. Bell pepper,
- c. Longan,
- d. Lychee, and

**F.** Treatment: Commodities meet the treatment provision of this rule when the requirements of subsection (F)(4) and (5) have been satisfied and the commodity has been treated in 1 of the manners set forth in subsection (F)(1), (2) or (3) for the appropriate commodity and type of fruit fly.

1. Fruits or vegetables treated in the manner specified for the appropriate fruit fly genus and commodity listed in either:

- a. The USDA Animal and Plant Health Inspection Service, Plant Protection and Quarantine Treatment Manual, as amended April 1987, which is incorporated herein by reference and on file with the Office of the Secretary of State. Treatments specified by USDA for export only are not acceptable for delivery in the USA. Treatment schedules listed by USDA for Hawaiian commodities may also be used for fruits and vegetables originating in other areas infested with fruit flies of the genera *Dacus* and *Ceratitis*; or,
- b. A Guide to Commodity Treatment in California, California Department of Food and Agriculture, Division of Plant Industry, as amended November 15, 1983, incorporated herein by reference and on file with the Office of the Secretary of State, with the exception of the use of ethylene dibromide which is prohibited.

2. Citrus fruit treated for Caribbean Fruit Fly (*Anastrepha suspensa*) by fumigation at atmospheric pressure in a gastight semitrailer or chamber using methyl bromide gas for a period of 2 hours at a pulp temperature of 21° C (70° F.) or above, using 40 g/m<sup>3</sup> (2-1/2 lbs/1000 cu. ft.). The load cannot exceed 80% of the volume of the semitrailer or chamber.

3. All soil, garbage or other material, which could be a carrier of fruit fly, shall be treated with 1/4 pound of actual Diazinon per 100 gallons of water, or 1/2 pound 50% Diazinon wettable powder per 100 gallons of water.

4. All commodities treated in accordance with subsection (F)(1) or (2) and (3) above for entry into the state of Arizona must be accompanied by a certificate signed by an agricultural official of the United States, state, county or commonwealth certifying that the treatment was done under his supervision, and provided that each and every container and sub-container bears a stamp with the state or area name where the treatment was made, and with the words, "Processed in Accordance with Arizona Requirements".

5. Commodities shall be treated only with those pesticides registered for use on the commodity in the state, county or commonwealth where treatment is made.

**G.** Requirements for Caribbean fruit fly free area designation: Commercially grown grapefruit and oranges meet the requirements of this rule for Caribbean fruit fly (*Anastrepha suspensa*) if they have originated in an area designated by an agricultural agency of the United States, state, county or commonwealth as a Caribbean fruit fly free area. The commodities shall be accompanied by a certificate signed by an agricultural official of the United States, state, county or commonwealth certifying that they originate in a designated area which is free of Caribbean fruit fly. Each and every container and sub-container shall bear a stamp with the words "Designated area". The designation of an area as free of Caribbean fruit fly shall be based upon the following minimum criteria:

1. Negative trapping:

- a. No more than 6 target plants with fruit shall be found within 3 miles of the perimeter of the designated area. The target plants are common guava, cattley guava, Surinom cherry, rose apple, and loquat.

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- b. Should 1 to 6 target plants with fruit be found within the subject buffer zone, ground or aerial bait spray shall be applied at 9 to 10 day intervals, beginning 30 days prior to harvest and continuing until the end of harvest.
  - e. The minimum size of the designated area shall be 300 acres.
  - d. The designated area shall be surrounded by a buffer zone of 1 1/2 miles.
  - e. Trap surveys shall be conducted as follows:
    - i. McPhail traps shall be set in the designated area and in the 1 1/2 mile buffer zone adjoining the designated area at the density of 15 traps per square mile. It is not required that areas without target plants such as pastures and marshlands (i.e., McPhail trap densities shall be concentrated in areas where target plants exist) be trapped.
    - ii. The attractant used in the McPhail trap shall be 4 or 5 yeast-borax tablets dissolved in 1/2 liter of water and shall be changed weekly.
    - iii. Trap servicing shall be conducted weekly from 30 days before harvest until the end of harvest.
  - f. Measures to be taken if Caribbean fruit fly is found in a designated area or its buffer zone are as follows:
    - i. If the Caribbean fruit fly is found as a result of the trap survey, Commission shall be notified within 1 working day of fruit fly identification.
    - ii. If 2 adults, within 1 1/2 miles of each other during a life cycle (30 days) are found during the trap survey in the designated area or in the surrounding buffer zone, the designation as a Caribbean fruit fly free area shall be withdrawn. The area can be redesignated as a Caribbean fruit fly free area if a 1/4 mile area around the trap catches is treated by aerial bait spray at 9 to 10 day intervals for 30 days with negative trapping.
    - iii. If either 1 or more larva or pupa is found during the survey in the designated area or in the surrounding buffer zone, the designation as a Caribbean fruit fly free area shall be withdrawn for the entire season.
2. Bait sprays:
- a. The minimum size of the designated area shall be 40 acres with an additional 300-foot buffer zone. The buffer zone shall not contain any target plants. The target plants are common guava, cattley guava, Surinom cherry, rose apple, and loquat.
  - b. No more than 6 target plants with fruit shall be found within 1 mile of the perimeter of the designated area.
  - e. McPhail traps shall be established in the designated area and 300-foot buffer zone at the density of 15 traps per square mile (a minimum of 4 traps shall be required).
  - d. The attractant used in the McPhail trap shall be 4 or 5 yeast-borax tablets dissolved in 1/2 liter of water and shall be changed weekly.
  - e. Trap servicing shall be conducted weekly from 30 days before harvest until the end of harvest.
  - f. There shall be a 30-day negative trapping period in the designated area and buffer zone prior to the area becoming eligible for designation as a Caribbean fruit fly free area.
  - g. In addition, aerial bait sprays are to be applied beginning 7 days prior to harvest and throughout the harvest period.
  - h. Measures to be taken if Caribbean fruit fly is found in a designated area or its buffer zone are as follows:
    - i. If a Caribbean fruit fly is found before spraying begins, the area involved shall be ineligible for designation as a Caribbean fruit fly free area.
      - (1) The designation as a Caribbean fruit fly free area shall be reinstated if the area is sprayed for a 30-day (one life cycle) period and no additional flies are found. Spraying is to be continued throughout the harvest period after designation is restored.
      - (2) If an additional fly is found during the 30-day preharvest spray period or during the harvest period after reinstatement, the area shall be ineligible for designation as a Caribbean fruit fly free area for the balance of the season.
    - ii. If Caribbean fruit fly is found after spraying begins, the area shall be ineligible for designation as a Caribbean fruit fly free area.
      - (1) The area may be redesignated as a Caribbean fruit fly free area after 30 days if no additional flies are trapped. Spraying is to be continued during the 30-day period and throughout the harvest period after designation is restored.
      - (2) If additional flies are found during the 30-day spray period, or during harvest after redesignation, the area shall be ineligible for designation as a Caribbean fruit fly free area for the balance of the season.
3. Bait spray formulations:
- a. Aerial bait spray shall consist of a mixture of 2.4 oz. (71.04 ml) 91% malathion and 9.6 oz. (284.16 ml) Staley's bait (Nulure) per acre.
  - b. Ground bait spray shall consist of 1 oz. (29.6 ml) Staley's bait (Nulure) and 1 oz. 56.44% EC malathion (Cythion - EPA Reg. No. 15905-196) per 1 gallon of water.

**H.E.** Disposition of violations: Any material or article which has been brought into the state of Arizona, or moved within the state of Arizona, in violation of this quarantine regulation shall immediately be sent out of the state, or returned to origin, or destroyed at the option and at the expense of the owner or owners, or their responsible agent, and under the direction of

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the State Entomologist or his inspectors: A regulated commodity shipped into Arizona in violation of this Section shall be destroyed or transported out-of-state at the owner's expense.

- I.** General rules: See "General Rules and Definitions, Article 1."
- J.** Pursuant to authority provided in subsection (C) of this rule, the State Entomologist hereby declares the state of Florida as an infested area for Caribbean fruit fly, *Anastrepha suspensa*, and lists the following commodities capable of being infested by, or harboring any stage of development, of said pest.
- K.** Commodities: All fruit and vegetables of the following:
1. The fruit of:

Apple	<i>Malus sylvestris</i>
Avocado	<i>Persea americana</i>
Balsam apple	<i>Marmodica charantia</i>
Barbados cherry	<i>Malpighia glabra</i>
Bell pepper	<i>Capsicum frutescens</i>
Box orange	<i>Severinia buxifolia</i>
Calamondin	<i>Citrus mitis</i>
Carambola	<i>Averrhoa carambola</i>
Ceylon gooseberry	<i>Dovyalis hebecarpa</i>
Cherry of the Rio Grande	<i>Eugenia aggregata</i>
Coco plum	<i>Chrysobalanus icaco</i>
Common guava	<i>Psidium guajava</i>
Egg fruit	<i>Pouteria campechiana</i>
Governor's plum	<i>Flacourtia indica</i>
Grapefruit	<i>Citrus paradisi</i>
Grumichama	<i>Eugenia brasiliensis</i>
Guiana plum	<i>Drypetes lateriflora</i>
Imbe	<i>Garcinia livingstonei</i>
Jaboticaba	<i>Myciaria cauliflora</i>
-----	<i>Myciaria glomerata</i>
Kei apple	<i>Dovyalis caffra</i>
Kumquat	<i>Fortunella japonica</i>
Kumquat (oval)	<i>Fortunella margarita</i>
Lime	<i>Citrus aurantifolia</i>
Lime berry	<i>Triphasia trifolia</i>
Litchi	<i>Litchi chinensis</i>
Loquat	<i>Eriobotrya japonica</i>
Mango	<i>Mangifera indica</i>
Miracle fruit	<i>Synsepalum dulcificum</i>
Natal plum	<i>Carissa grandiflora</i>
Orange jasmine	<i>Murraya paniculata</i>
Paraguava	<i>Britoa acida</i>
Peach	<i>Prunus persica</i>
Pear	<i>Pyrus communis</i>
Pitomba	<i>Eugenia lusehnathiana</i>
Pomegranate	<i>Punica granatum</i>
Rose apple	<i>Syzygium jambos</i>
Sapidolla	<i>Achras zapota</i>
Sour orange	<i>Citrus aurantium</i>
Strawberry guava	<i>Psidium cattleianum</i>
Sugar apple	<i>Annona squamosa</i>
Surinam cherry	<i>Eugenia uniflora</i>
Sweet orange	<i>Citrus sinensis</i>
Tangelo	<i>Citrus paradisi x C. reticulata</i>
Tangerine	<i>Citrus reticulata</i>
Temple orange	<i>Citrus sinensis x C. reticulata</i>
Tomato	<i>Lycopersicon esculentum</i>
Tropical almond	<i>Terminalia catappa</i>
Wampi	<i>Clausena lansium</i>
Water apple	<i>Syzygium samarangense</i>
White sapote	<i>Casimiroa edulis</i>

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- *Pseudanmomis umbellulifera*
2. ~~Avocados, mangoes, litchis, bell peppers and tomatoes may be shipped to Arizona without fumigation if commercially grown and packed. If not commercially grown and packed, these fruits must be certified as having been fumigated.~~

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 17. TRANSPORTATION**

**CHAPTER 3. DEPARTMENT OF TRANSPORTATION**

**HIGHWAYS**

**PREAMBLE**

**1. Sections Affected**

Article 3  
R17-3-301  
R17-3-301  
R17-3-302  
R17-3-302  
R17-3-303  
R17-3-303  
R17-3-304  
R17-3-304  
R17-3-305  
R17-3-306

**Rulemaking Action**

Amend  
Repeal  
New Section  
Repeal  
New Section  
Repeal  
New Section  
Repeal  
New Section  
New Section  
New Section

**2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 28-366 and 28-7148

Implementing statutes: A.R.S. §§ 28-7141 through 28-7149 and 28-7152

**3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 7 A.A.R. 2236, June 1, 2001 (expired)

Notice of Rulemaking Docket Opening: 8 A.A.R. 2643, June 21, 2002

**4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Wendy S. LeStarge, Rules Analyst  
Address: Arizona Department of Transportation  
Administrative Rules Unit, Mail Drop 507M  
3737 N. 7th Street, Suite 160  
Phoenix, AZ 85014-5079  
Telephone: (602) 712-6007  
Fax: (602) 241-1624  
E-mail: wlestarge@dot.state.az.us

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters, at [www.dot.state.az.us/ABOUT/rules/index.htm](http://www.dot.state.az.us/ABOUT/rules/index.htm).

**5. An explanation of the rule, including the agency's reasons for initiating the rule:**

This proposed rulemaking deals with the relocation assistance program under A.R.S. §§ 28-7141 through 28-7149 and 28-7152. Under this program, the Arizona Department of Transportation ("ADOT") is authorized to pay certain expenses to persons and businesses that have been displaced due to construction or reconstruction of transportation facilities. This proposed rulemaking arises from proposed agency action in the five-year review report approved by the Governor's Regulatory Review Council on May 2, 2000 (F-00-0402). This proposed rulemaking also was subject

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of a petition for rulemaking under A.R.S. § 41-1033. The ADOT Director granted the petition for rulemaking on May 17, 2001.

Arizona's relocation assistance statutes are based on the federal statutes, the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, 42 U.S.C. §§ 4601 et seq. The policy reason behind the relocation assistance program is to minimize the hardship of displacement to those persons displaced by programs and projects designed for the benefit of the public as a whole. 42 U.S.C. § 4621(b).

The Arizona statutes establish the main concepts for relocation assistance. Displacees are distinguished between a residential and non-residential displacee. A residential displacee may be eligible for three types of relocation payments: moving expenses, replacement housing, and housing of last resort. A non-residential displacee may be eligible for moving expenses and reestablishment expenses. The statutes also set out the maximum amount of money a person can claim for replacement housing, and broad eligibility criteria.

Main definitions are set out in A.R.S. § 28-7141. ADOT provides relocation services to a displacee, such as determining needs, providing information on sales and rentals, and assisting farms and businesses to reestablish in a new location. A.R.S. § 28-7142. A displacee can receive money for moving and related expenses, such as the actual expenses for moving, some expenses for direct loss of personal property, and reestablishment expenses for a small business of up to \$10,000. A.R.S. § 28-7143. A displacee has the option to recover actual moving expenses, or fixed payments based on a schedule, although a business is limited to an amount between \$1,000 and \$20,000. A.R.S. § 28-7143.

For replacement housing payments, a residential owner who has owned the property for at least 180 days can qualify for up to \$22,500 to assist in purchasing a comparable replacement dwelling. A.R.S. § 28-7144(A). This money can go towards the difference in price for a comparable replacement dwelling, the difference in interest rate, or other costs. A.R.S. § 28-7144(A)(1) through (3). A property owner can also receive money for recording fees, penalty for prepayment of mortgage, and property taxes already paid. A.R.S. § 28-7145. A tenant or residential owner who owned the property for at least 90 days can receive rental assistance of up to \$5,250, for up to forty-two months. A.R.S. § 28-7146(A) and (B). A displacee can request that the rental assistance be used as a downpayment to purchase a comparable replacement dwelling. A.R.S. § 28-7146(C). A displacing agency like ADOT has the obligation to ensure that no person is forced to leave their home without a comparable replacement dwelling to go to, except for emergencies. A.R.S. § 28-7152(C). If time and circumstances mean that a comparable replacement dwelling is not available, then ADOT can exceed the statutory amounts to find replacement housing as a last resort. A.R.S. § 28-7152(A).

ADOT must make rules that ensure fair and uniform payment, prompt payment, and if needed advance payment, and a grievance review procedure. A.R.S. §§ 28-7147, 28-7148(A). ADOT also can make rules consistent with and appropriate to carry out the relocation assistance statutes. A.R.S. § 28-7148(B).

ADOT's relocation assistance rules, as contained in R17-3-301 through R17-3-304, have not been updated since 1970. The existing rules conflict with current federal regulations and are inadequate to compensate displaced persons. ADOT is repealing all of the existing rules, and creating new sections that incorporate by reference the federal regulations on uniform relocation assistance, 49 CFR, Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. The proposed rulemaking is organized as follows.

R17-3-301 lists the sections of 49 CFR, Part 24 that ADOT incorporates as its own. This proposed rulemaking concerns only relocation assistance for residential and business. It does not address property acquisition nor utility relocation. ADOT amends parts of the federal regulations in order to conform to ADOT's program and procedures. The incorporated federal regulations are organized as follows:

1. Subpart A, of 49 CFR, Part A – General, lists and describes many of the general aspects of the relocation assistance program:

Section 24.2 contains the definitions, elaborating on some of the statutory definitions. Section 24.3 prohibits duplication of payments between different government entities. Section 24.5 describes the notices to a property owner or occupant. The notices are defined in 49 CFR 24.2, and describe a person's eligibility for relocation assistance. Section 24.8 requires compliance with other laws, such as civil rights laws.

Section 24.9 describes ADOT's recordkeeping requirements.

Section 24.10 sets out the appeal process.

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2. Subpart C, of 49 CFR, Part A – General Relocation Requirements, describes more specific aspects of eligibility:

Section 24.202 states that the relocation requirements apply to any displaced person. Section 24.203 describes the specifics of what is contained in the notice, and requires that a displacee be given at least a 90-day notice to relocate.

Section 24.204 reiterates the requirements of A.R.S. § 28-7152(B) that no person be displaced without a comparable replacement dwelling, unless in time of emergency. Section 24.205 describes the relocation planning and services offered by ADOT.

Section 24.206 covers eviction.

Section 24.207 lists the general requirements for relocation payment claims, such as documentation, time-line, and advance payments.

Section 24.208 is a recent amendment that requires a displacee to be a United States citizen or a lawful permanent resident in order to receive relocation payments or advisory assistance. An exception exists if a displacee can show exceptional and extremely unusual hardship to a spouse, parent, or child who is a United States citizen or a lawful permanent resident. Since ADOT accepts federal monies for its highway construction projects, including relocation assistance, ADOT must comply with this federal law.
3. Subpart D, of 49 CFR, Part A – Payments for Moving and Related Expenses describes criteria and eligibility for moving and related expenses payments:

Section 24.301 lists the expenses that can be claimed under A.R.S. § 28-7143 for residential moves.

Section 24.302 describes the fixed payments under the schedule, as described under A.R.S. § 28-7143(B).

Section 24.303 lists the expenses that can be claimed under A.R.S. § 28-7143 for non-residential moves.

Section 24.304 lists the eligible reestablishment expenses for a non-residential move. Section 24.305 lists ineligible expenses.

Section 24.306 describes the fixed payment according to the schedule for non-residential moves, as described under A.R.S. § 28-7143(C).
4. Subpart E, of 49 CFR, Part A – Replacement Housing Payments describes eligibility and criteria for replacement housing for residential displacees:

Section 24.401 implements A.R.S. § 28-7144, describing eligibility and the procedure for a 180-day homeowner to use up to \$22,500 to purchase a comparable replacement dwelling.

Section 24.402 implements A.R.S. § 28-7146, describing eligibility and the procedure for a tenant or 90-day homeowner to use up to \$5,250 for rental assistance or to purchase a comparable replacement dwelling.

Section 24.403 describes additional rules for replacement housing payments.

Section 24.404 implements A.R.S. § 28-7152, or as described in the federal regulations, replacement housing of last resort.
5. Subpart F of 49 CFR, Part A – Mobile Homes, mirrors the eligibility requirements and criteria of a residential homeowner:

Section 24.501 describes applicability of this subpart.

Section 24.502 describes eligible moving and related expenses for a mobile home.

Section 24.503 describes eligibility for a 180-day owner to use up to \$22,500 to purchase a comparable replacement dwelling.

Section 24.504 describes eligibility for a tenant or 90-day owner to use up to \$5,250 for rental assistance or to purchase a comparable replacement dwelling.

Section 24.505 describes additional rules for relocation payments for mobile homes, based on circumstances of whether an owner owns both the property and the mobile home.
6. Appendix A to Part 24 offers further explanations and examples of various technical terms.

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ADOT amends various sections of the incorporated federal regulations in order to conform with ADOT's program and procedures, and to account for differences in Arizona statutes. ADOT also amends sections to eliminate references to property acquisition or utility relocation. R17-3-302 amends 49 CFR Subpart A – General. R17-3-302(A) amends and clarifies various definitions in 49 CFR 24.2. R17-3-302(B) amends 49 CFR 24.5, manner of notices, to eliminate references to property acquisition. R17-3-302(C) amends 49 CFR 24.9(a) the recordkeeping and reports requirement to conform to Arizona law. R17-3-302(D) amends 49 CFR 24.10 on appeals to conform to Arizona law on administrative review, A.R.S. §§ 41-1061 through 41-1067. R17-3-302(E) creates provisions for potential conflict of interest if a displaced person is an employee of the state, or of a political subdivision involved in a joint project with ADOT. R17-3-303(F) allows ADOT to determine whether or not a person is required to relocate permanently as a result of a project.

R17-3-303 amends 49 CFR Subpart C – General Relocation Requirements. R17-3-303(A) amends 49 CFR 203(b), to begin relocation eligibility on the date of the notice of intent to acquire or the notice of eligibility instead of the initiation of negotiations since Arizona statutes define initiation of negotiations differently than the federal regulations. R17-3-303(B) amends 49 CFR 24.205 to allow limited planning when timing or scheduling is restricted, and eliminates subsection (b) since ADOT does not use loans as part of its relocation assistance program. R17-3-303(C) amends 49 CFR 24.206 on eviction to conform to Arizona law, and the ADOT relocation program.

R17-3-304 amends 49 CFR Subpart D – Payments for Moving and Related Expenses. R17-3-304(A) amends 49 CFR 24.301(d) to limit storage expenses, and deletes subsection (f), since ADOT does not pay for lost, stolen, or damaged property not covered by insurance. R17-3-304(B)(1) amends 49 CFR 24.303 by deleting as an eligible expense any reference to lost, stolen, or damaged property not covered by insurance, or fees paid to a real estate agent, other than a commission. R17-3-304(B)(2) allows for some professional planner services, if pre-approved. R17-3-304(B)(3) eliminates “fair” from the term fair market value, since the industry terminology is just “market value.” R17-3-304(B)(4) allows ADOT to determine whether a business owner may elect to self-move. R17-3-304(B)(5) clarifies that payment is for an on-premise advertising sign. R17-3-304(C) amends 49 CFR 24.305(h) on ineligible expenses to allow a legal fee only as required under A.R.S. § 28-7153.

R17-3-305 amends 49 CFR Subpart E – Replacement Housing Payments. R17-3-305(A)(1) eliminates “fair” from the term fair market value, since the industry terminology is just “market value.” R17-3-305(A)(2) amends 49 CFR 24.401(d) to allow a residential displacee to use replacement housing payments to buy down the interest rate on a comparable replacement dwelling. R17-3-305(A)(3) and (4) eliminate incidental expenses that are not normally incurred in Arizona, such as legal fees, escrow agent fees, and state taxes. R17-3-305(B)(1) amends 49 CFR 24.402(b)(2) to eliminate “fair” from the term fair market value, since the industry terminology is just “market value.” R17-3-305(B)(2) amends 49 CFR 24.402(c)(1) to reflect ADOT's program to not pay more than the computed payment, and not up to the maximum allowed by statute. R17-3-305(C)(1) amends 49 CFR 24.403 to reflect ADOT's program criteria of requiring only one comparable replacement dwelling. R17-3-305(C)(2) and (3) eliminate “fair” from the term fair market value, since the industry terminology is just “market value.”

R17-3-306 amends portions of Appendix A to Part 24.

**6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

None

**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**8. The preliminary summary of the economic, small business, and consumer impact:**

The relocation assistance program provides financial assistance and program services to persons and businesses displaced by construction and reconstruction programs and projects designed to benefit the public as a whole. The benefits of the relocation assistance program are substantial to the displaced public, the main stakeholders of this proposed rulemaking. The maximum monetary amounts for reimbursement are set by statute. This proposed rulemaking establishes the specifics for ADOT to administer the program fairly and in a fiscally efficient manner in accordance with disbursing public money.

The proposed rulemaking provides numerous benefits to the displaced public. It informs them of claim procedures, the types of notices used that begin the process, and the specific advisory services ADOT offers. It establishes rights for displacees in appeal and eviction proceedings. It provides certainty by listing eligible and ineligible expenses that may be claimed under relocation assistance. The proposed rulemaking also explains how replacement housing pay-

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ments are calculated, and the options a residential displacee has for using a replacement housing payment, as a down-payment, to reduce a mortgage interest rate, or as rental assistance. It implements the statutory provisions for payments for housing of last resort, which allows ADOT to exceed the statutory limits for replacement housing payments. The proposed rulemaking also seeks to minimize inconvenience costs, by allowing for advance payment of costs, and payments according to a federal fixed schedule.

Since ADOT does not have an unlimited amount of money to disburse, the proposed rulemaking sets out fair eligibility criteria so that most displacees will be adequately compensated for their hardship of relocating. However, eligibility criteria means costs for displacees, since they will not be eligible for any and all costs they may incur. The proposed rulemaking lists eligible and ineligible expenses, and establishes an 18-month deadline to submit a claim. The proposed rulemaking also imposes costs in time and effort. A displacee has to provide documentation, such as receipts, to show expenses incurred, or may have to submit bids to receive advance payment for a cost. It establishes limiting criteria to qualify for payments for housing of last resort. It also prohibits any payments to a displacee that is not a United States citizen or lawful permanent resident.

The relocation assistance program constitutes substantial costs for ADOT. ADOT paid out over \$20 million for claims in 2001. The benefits are intangible, constituting public goodwill and good relations. Other state agencies and political subdivisions benefit by this proposed rulemaking, since ADOT provides the services and payments, thereby lessening disruption to the displaced public. Businesses that provide relocation services, such as realtors or moving companies, also benefit since their services constitute reimbursable expenses.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Wendy S. LeStarge, Rules Analyst  
Address: Arizona Department of Transportation  
Administrative Rules Unit, Mail Drop 507M  
3737 N. 7th Street, Suite 160  
Phoenix, AZ 85014-5079  
Telephone: (602) 712-6007  
Fax: (602) 241-1624  
E-mail: wlestarge@dot.state.az.us

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

No oral proceeding is schedule for this rulemaking. Written, faxed, e-mail comments, or requests for an oral proceeding may be made by contacting the analyst listed in item #4 between 8:00 a.m. and 4:30 p.m., Monday through Friday. If no oral proceeding is requested, the public comment period shall continue for 30 days from this notice's publication date. This rulemaking's public record will close at 4:30 p.m. on January 8, 2003.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

**12. Incorporations by reference and their location in the rules:**

In R17-3-301, subsection (A):

49 CFR Sections 24.2, 24.3, 24.5, 24.8, 24.9, 24.10, 24.202, 24.203, 24.204, 24.205, 24.206, 24.207, 24.208, 24.301, 24.302, 24.303, 24.304, 24.305, 24.306, 24.401, 24.402, 24.403, 24.404, 24.501, 24.502, 24.503, 24.504, 24.505, and Appendix A to Part 24 published October 1, 2001.

**13. The full text of the rules follows:**



TITLE 17. TRANSPORTATION

CHAPTER 3. DEPARTMENT OF TRANSPORTATION  
HIGHWAYS

**ARTICLE 3. ~~RIGHT OF WAY ACQUISITION AND MANAGEMENT~~ RELOCATION ASSISTANCE**

Section

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**ARTICLE 3. ~~RIGHT OF WAY ACQUISITION AND MANAGEMENT~~ RELOCATION ASSISTANCE**

**R17-3-301. ~~Relocation program to conform with state and federal statutes~~ Relocation Assistance; Adoption of Federal Regulations**

- A.** ~~The Arizona Highway Department's Relocation Program has been operating under regulations adopted by the Arizona State Highway Commission on April 2, 1969.~~
1. ~~Clarification of regulations has been received on a continuing basis from the Bureau of Public Roads.~~
  2. ~~It is the intent of the Arizona State Highway Commission to require the Relocation Program to fully conform with state and federal statutes and regulations thereto on a continually current basis.~~
- B.** ~~The Arizona State Highway Commission hereby adopts the following regulations to ensure conformance to the above.~~
1. ~~Definitions. Specific terms relating to the Relocation Program are defined in the regulations of the Bureau of Public Roads in the A.R.S. § 18-141 and in procedures incorporated in the Right-of-Way Manual. These definitions are hereby adopted.~~
  2. ~~Relocation advisory service. The Arizona State Highway Department may give relocation assistance authorized by A.R.S. § 18-142 to any individual, family, business or farm operation displaced because of the acquisition of real property for any project on the State Highway System or Federal Aid System. In giving such assistance, the Property Management Division of the Right-of-Way Section shall be governed by established procedures that are implemented into the Right-of-Way Manual.~~
  3. ~~Schedules:-~~
    - a. ~~Moving costs for unfurnished dwellings, re A.R.S. § 18-143.B:~~

1 Room	\$25.00	5 Rooms	\$125.00
2 Rooms	50.00	6 Rooms	150.00
3 Rooms	75.00	7 Rooms	175.00
4 Rooms	100.00	8 Rooms or	200.00

~~max. more~~  
~~Plus \$100.00 dislocation allowance.~~
    - b. ~~Moving costs for furnished dwellings, re A.R.S. § 18-143.B and Bureau of Public Roads request:~~

1 Room	\$15.00	7 Rooms	\$105.00
2 Rooms	30.00	8 Rooms	120.00
3 Rooms	45.00	9 Rooms	135.00
4 Rooms	60.00	10 Rooms	150.00
5 Rooms	75.00	11 Rooms	165.00
6 Rooms	90.00	12 Rooms or	180.00

~~max. more~~  
~~Plus \$100.00 dislocation allowance.~~
    - c. ~~Moving costs for mobile homes, re Bureau of Public Roads request, including cost to move, tear down, set up, re-level:~~

Size	Schedule	Move
Up to 8' wide x 40' in length		\$75.00
8' wide over 40' in length		100.00
10' width		125.00

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12' width 150.00

14' width 200.00

Plus \$100.00 dislocation allowance.

4. Decent, safe and sanitary standards. The establishment of decent, safe and sanitary standards will conform to those contained in Instructional Memo 80-1-68, dated September 5, 1968, covering the Administration of the Highway Relocation Assistance Program established by Chapter 5 of Title 23 U.S.C. Any exceptions to these standards are authorized only in conformance with procedures established by the Bureau of Public Roads regulations and upon written approval thereof from the Bureau of Public Roads.
  5. Eligibility for payment. Eligibility for payments for moving costs, owner or tenant supplemental payment, and optional business payments, is established for those persons or firms otherwise eligible who were in occupancy on April 2, 1969, if the property was purchased before that date; persons or firms whose property is purchased on or subsequent to April 2, 1969, are eligible for payment in accordance with §§ 18-143, 18-144 and 18-146, Title 18, Chapter 1, A.R.S. Article 2.1.
  6. Claim for relocation payments. Applications for moving expense payments and supplemental payments shall be made to the state upon forms prescribed by the state agency and shall be accomplished by such information and documents as may be required by the state agency. Except as otherwise provided, no applications for relocation payments will be accepted more than 18 months after the date on the notice to vacate. After an eligible person has vacated the property, no relocation payments will be made to any person with respect to the subsequent occupancy of the same property. Relocation payments shall not be made prior to the date the property is acquired and possession is taken. A state agency, city, county, district or other subdivision of government shall not be eligible to receive relocation payments. A displaced person or firm who rents or leases property from the Arizona State Highway Department shall not be eligible for relocation payments unless the eligibility is a result of continued occupancy from prior ownership or tenancy.
- A.** The Department incorporates 49 CFR 24.2, 24.3, 24.5, 24.8, 24.9, 24.10, 24.202, 24.203, 24.204, 24.205, 24.206, 24.207, 24.208, 24.301, 24.302, 24.303, 24.304, 24.305, 24.306, 24.401, 24.402, 24.403, 24.404, 24.501, 24.502, 24.503, 24.504, 24.505, and Appendix A to Part 24 published October 1, 2001, and no later amendments or editions by reference and on file with the Arizona Department of Transportation and the Office of Secretary of State, as amended by R17-3-301 through R17-3-306. An unofficial version of the federal regulations is available at <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>.
- B.** The following definitions apply for the purpose of R17-3-301 through R17-3-306 unless indicated otherwise. "Department" means the Arizona Department of Transportation.

**R17-3-302. Claim for relocation payments Relocation Assistance; 49 CFR Subpart A – General**

It is the intent of the Arizona State Highway Commission to require its relocation program to fully conform with state and federal statutes and regulations thereto on a continually current basis.

1. Section VI of Commission Resolution 70-60, which was adopted by the Commission on July 17, 1970, is in conflict in part with federal interpretation of those regulations.
  2. The strict application of this Section creates a definite hardship for certain relocatees.
  3. The Arizona State Highway Commission adopts the following Section VI as a substitution and to replace original Section VI of Commission Resolution 70-60 (R16-3-12).
    - a. Claim for relocation payments. (6) "Applications for moving expense payments and supplemental payments shall be made to the Arizona Highway Department (Department) upon forms prescribed by it and shall be accompanied by such information and documents as may be required by the Department. No application for relocation payments will be accepted after 18 months from the date a displaced person actually vacates the property, except that the Department may in its discretion extend this time period to avoid unjust results. After an eligible person has vacated the property, no relocation payments, except moving expenses, will be made to any person who subsequently occupies the same property. Relocation payments shall not be made prior to the date property is acquired and possession is taken, provided, however such payments may be made prior to that time if the Department determines a denial thereof would work an undue hardship on a person to be displaced. A displaced person or firm who rents or leases property from the Arizona Highway Department shall not be eligible for relocation payments unless the eligibility is a result of continued occupancy from prior ownership or tenancy."
- A.** 49 CFR 24.2 Definitions is amended as follows:
1. "Agency" as referred to throughout the materials incorporated by reference means the Arizona Department of Transportation.
  2. "Business" is amended to read:  
The term business means any lawful activity, including a farm operation, that is conducted;
  3. "Comparable replacement dwelling" is amended at paragraph (8)(i) to read:  
A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days before initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if

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- the homeowner will receive the price differential as described in Sec. 24.401(c), all increased mortgage interest costs as described at Sec. 24.401(d) and all incidental expenses as described at Sec. 24.401(e), plus any additional amount required to be paid under Sec. 24.404, Replacement housing of last resort.
4. “Contribute materially” is amended to read:  
The term contribute materially means that during the two taxable years before the taxable year in which displacement occurs, a business:
    - a. (1) Contributed at least 33 1/3 percent of the owner’s or operator’s average annual gross income from all sources,
    - b. (2) Registered and has a use permit from the local political subdivision, and
    - c. (3) Submitted federal income tax returns for the last two years.
  5. “Decent, safe, and sanitary dwelling” is amended to read:  
The term decent, safe, and sanitary dwelling means a dwelling which meets applicable housing and occupancy codes. However, any of the following standards which are not met by an applicable code shall apply unless waived for good cause by the federal agency or state agency funding the project. The dwelling shall:
    - a. (1) Be structurally sound, weathertight, and in good repair.
    - b. (2) Contain a safe electrical wiring system adequate for lighting and other devices.
    - c. (3) Contain heating and cooling systems capable of sustaining a healthful temperature for a displaced person, except in those areas where local climatic conditions do not require such systems.
  6. “Displaced person” is amended to read:
    - a. (1) General. The term displaced person means, except as provided in the definition of “persons not displaced”, any person who is required to move from the real property or moves his or her personal property from the real property as a direct result of the real property being acquired in whole or in part for an approved state project.
      - i. This includes a person who occupies the real property before its acquisition but does not meet the length of occupancy requirements for relocation assistance other than reimbursement of moving expenses.
      - ii. Any person who does not meet the statutory occupancy requirements and is unable to obtain comparable replacement housing within the person’s financial means is eligible only for assistance under Sections 24.401 and 24.402, as qualified by Section 24.404, in obtaining comparable, decent, safe and sanitary housing.
    - b. “Persons not displaced” is amended as follows:
      - i. Amend paragraph (2)(i) to read:  
A person who moves before the initiation of negotiations unless this requirement is waived by the Department due to a move necessitated for reasons beyond the person’s control.
      - ii. Delete paragraphs (2)(v), (2)(viii), (2)(ix), and (2)(x).
  7. “Initiation of negotiations” is amended to have the same meaning as prescribed in A.R.S. § 28-7141(8).
  8. “Notice of intent to acquire or notice of eligibility for relocation assistance” is amended to read:  
Written notice furnished to a person to be displaced that establishes eligibility for relocation benefits before the initiation of negotiation.
  9. “Owner of dwelling” is amended to read:  
Subsection (3) is deleted from R17-3-301 through R17-3-306.
  10. “Program or project” is amended to read:  
The phrase “program” or “project” means any displacing activity or series of activities undertaken by the Department, related to construction and reconstruction of transportation facilities or facilities necessary for maintaining transportation facilities.
  11. “Salvage value” is deleted from R17-3-301 through R17-3-306.
  12. “State” is amended to read:  
“State” means a state of the United States or the District of Columbia.
  13. “Uneconomic remnant” is deleted from R17-3-301 through R17-3-306.
  14. “Uniform Act” is amended to read:  
The term “Uniform Act” refers to A.R.S. §§ 28-7141 through 28-7156.
  15. “Unlawful occupancy” is amended to read:  
A person is considered to be in unlawful occupancy if:
    - a. A court of competent jurisdiction has found the person guilty of forcible entry and detainer, or forcible detainer (under A.R.S. §§ 12-1171 through 12-1183) before the initiation of negotiations, or
    - b. The Department determines that the person is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property under state law.
  16. “Utility costs” is amended to read:  
The term utility costs means expenses for electrical, gas, water, and sewer.
  17. “Utility facility” is deleted from R17-3-301 through R17-3-306.
  18. “Utility relocation” is deleted from R17-3-301 through R17-3-306.

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**B.** 49 CFR 24.5 Manner of notices is amended to read:

Each notice the Agency is required to provide to a property owner or occupant under this part shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in Agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

**C.** 49 CFR 24.9(a) Recordkeeping and reports is amended to read:

1. (a) Records. The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least five years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under this part, or in accordance with the applicable regulations of the federal funding agency, whichever is later.
2. Paragraph (c) is deleted from R17-3-301 through R17-3-306.

**D.** 49 CFR 24.10 Appeals is amended to read:

In addition to the statutory provisions of A.R.S. §§ 41-1061 through 41-1067, the following provisions apply:

1. Actions which may be appealed. A person applying for payment under a state transportation project, who believes the Department has failed to determine properly the person's eligibility for or the amount of a relocation payment, may file a written appeal. A person shall include all contested issues on one appeal.
2. Process. To appeal, a person shall submit a letter stating name and address, and the reasons for disagreeing with the Department's decision to the Right-of-Way Group, Arizona Department of Transportation, 205 S. 17th Ave., MD 612E, Phoenix, AZ 85007-3212.
3. Time limit. The person must file the written appeal within 60 days after receiving notice of the Department's determination on the person's claim. The date the appeal request is received will begin the official time limit constraints. Filing the appeal does not extend any eligibility periods or a required vacate date.
4. Hearing date. Within 45 days of receiving the appeal request, the Department shall set a mutually acceptable date for a hearing before a hearing officer.
5. Review of files. Upon making a written request, the person may review and copy any non-confidential documentation contained in the Department's files regarding the person's appeal.
6. Scope of review. The Department shall consider and review the person's arguments, statements, and documents in support of the appeal, allowing reasonable latitude for the hearing of relevant material.
7. Right to representation. The person has a right to be represented by legal counsel or other representative in connection with the person's appeal, but solely at the person's own expense.
8. Determination. Within 30 days of the hearing, the hearing officer shall make a recommendation to the Chief Right-of-Way Agent. The Department shall issue a written decision and provide a copy to the person by certified mail. The Department shall explain the basis on which its decision was made, and what relief, if any, is to be provided.
9. If the Department does not grant full relief requested, the Department shall advise the person of the right to seek judicial review.

**E.** Conflict of interest. If a displaced person is an employee of the state, or of a political subdivision involved in a joint project with the displacing agency, the Department shall forward the displaced person's file to the Office of the Attorney General for settlement purposes and finalization.

**E.** The Department shall determine whether a person is required to relocate permanently as a direct result of a project.

**R17-3-303. Relocation assistance program Relocation Assistance; 49 CFR Subpart C – General Relocation Requirements**

**A.** The Relocation Assistance Program of the Arizona Highway Department has been operating under regulations adopted by the Arizona State Highway Commission on July 28, 1970, as amended on May 7, 1971.

1. Public Law 91-646, "Uniform Relocation Assistance and Land Acquisition Policies Act of 1970", was enacted on January 2, 1971, by the 91st Congress of the United States.
2. Title 18, Chapter 1, Article 2.1, Arizona Revised Statutes was amended by the Thirtieth Legislature of the state of Arizona and signed into law by the Governor on April 16, 1971, which enables the state to provide relocation assistance in accordance with the aforementioned Public Law 91-646.
3. Instructional Memorandum 80-1-71 was promulgated by the Federal Highway Administration and sets forth the rules and regulations which must be adhered to by the state as a prerequisite to federal reimbursement.
4. It is the intent of the Arizona State Highway Commission to require the Relocation Assistance Program to fully conform with state and federal statutes and regulations on a continually current basis.

**B.** The Arizona State Highway Commission hereby adopts the following regulations to ensure conformance to the above.

1. Adoption of federal regulations. Those regulations, definitions, policies and procedures promulgated by the United States Department of Transportation, Federal Highway Administration in a document known as Instructional Memorandum 80-1-71, Right of Way 20, is hereby adopted by this reference as the regulations of the Arizona Highway Department for the implementation of Title 18, Chapter 1, Article 2.1, Arizona Revised Statutes as amended.

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2. Substitution of words:
  - a. Wherever in Instructional Memorandum 80-1-71, Right of Way 20, the term state, state agency, or State Highway Department is used, it shall be deemed to mean the Arizona State Highway Department.
  - b. Wherever in Instructional Memorandum 80-1-71, Right of Way 20, the term federal or Federal Aid Highway is used, those words shall be deemed to include state highways, state routes and state highway construction.
- C.** Moving cost schedules:
  1. Occupants of unfurnished dwelling units per A.R.S. § 18-143.B:  
1 Room \$50.00 5 Rooms \$200.00  
2 Rooms 80.00 6 Rooms 240.00  
3 Rooms 120.00 7 Rooms 280.00  
4 Rooms 160.00 8 Rooms or 300.00  
more  
Plus \$200.00 dislocation allowance.
  2. Occupants of furnished dwelling units per A.R.S. § 18-143.B:  
1 Room \$15.00  
Each additional room \$10.00 up to maximum of \$300.00  
Plus \$200.00 dislocation allowance.
  3. Occupants who move mobile homes per A.R.S. § 18-143.B:  
300 sq. ft. \$130.00 501-600 sq. ft. \$240.00  
300-400 sq. ft. 180.00 601-700 sq. ft. 270.00  
400-500 sq. ft. 210.00 over 700 sq. ft. 300.00  
Plus \$200.00 dislocation allowance.
  4. Occupants of mobile homes moving only personal property per A.R.S. § 18-143(B).
- D.** Appeal procedure:
  1. Any person aggrieved by a determination of the Arizona Highway Department as to eligibility or amount of financial assistance offered may appeal in writing to the Director of the Department for review in accordance with procedures set forth in the Right of Way Manual.
- E.** Relocation assistance advisory service:
  1. Where the State Highway Director determines that any person occupying property immediately adjacent to the right of way is caused substantial economic injury because of the acquisition of right of way, he may offer such person advisory services which shall not include any payments.
- F.** Last resort housing:
  1. In the event the state wishes to acquire a person's home in an area where comparable sale or rental housing is not available and action as is necessary or appropriate to provide such housing.
- A.** 49 CFR 24.203(b) Notices of relocation eligibility is amended to read:  
Notice of relocation eligibility. Eligibility for relocation assistance shall begin on the date of the notice of intent to acquire or notice of eligibility for relocation assistance (defined in Sec. 24.2) for the occupied property. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.
- B.** 49 CFR 24.205 Relocation planning, advisory services, and coordination is amended as follows.
  1. Paragraph (a) is amended to read:  
Relocation planning. During the early stages of development, federal and federal-aid programs or projects will be planned in a manner that the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations are recognized and solutions are developed to minimize the adverse impacts of displacement. The planning, appropriate to the scope, complexity, and scheduling shall precede any action by an Agency which will cause displacement. The planning should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. If timing or scheduling is restricted, the planning may be limited. Planning may involve a relocation survey or study which may include the following:
  2. Paragraph (b) is deleted from R17-3-301 through R17-3-306.
- C.** 49 CFR 24.206 is amended to read:
  1. Eviction for cause must conform to A.R.S. §§ 12-1171 through 12-1183. The Department may determine that a person who is an unlawful occupant (as defined in 49 CFR 24.2) is still eligible for certain relocation assistance, using the following factors:
    - a. The person received an eviction notice before the initiation of negotiations and, as a result of that notice is later evicted;
    - b. The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement;
    - c. The eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this part;

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- d. The person occupying the property and the owner dispute the issue of lawful occupancy;
- e. The duration of prior legal occupancy of the person occupying the property;
- f. Financial or medical hardship of the person occupying the property; or
- g. The cost of the certain relocation assistance is less than the cost of an appeal.
2. For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available.
3. The state may initiate eviction proceedings due to:
  - a. Unlawful activities being conducted on state-owned property,
  - b. Willful destruction of state-owned property,
  - c. Refusal to vacate state-owned property after all required notices to vacate have been delivered and appropriate assistance provided, or
  - d. Failure to pay rent when there is no hardship.

**R17-3-304. Rental of lands held for state highway purposes Relocation Assistance; 49 CFR Subpart D – Payments for Moving and Related Expenses**

Arizona Revised Statutes § 18-155.D authorizes the Arizona State Highway Commission to lease or let at fair rental value any lands which are held for state highway purposes:

- ~~1. The number of parcels currently being leased makes it impracticable for the Arizona State Highway Commission to personally execute the rental of these properties and to determine if and when the terms of the rental agreements have been violated.~~
  - ~~2. The Arizona State Highway Commission shows faith and trust in the judgment of the State Highway Director and subordinate officers and employees of the Right-of-Way Section of the Arizona Highway Department.~~
  - ~~3. The Arizona State Highway Commission does, until further action, authorize and delegate to the Director and such employees of the Arizona Highway Department as he may designate the authority to enter into rental or lease agreements at fair rental value for any lands which are held for state highway purposes and are not presently needed therefor.~~
  - ~~4. The Commission authorizes the Director or his designee to proceed by any legal means to enforce the provisions of the rental or lease agreements and to evict by lawful means any tenant in violation of his rental or lease agreement.~~
  - ~~5. The director or his designee is authorized to renovate, repair, maintain and oversee such properties as are subject to lease and rental agreements to best secure to the people of the state of Arizona a fair rental return from such properties.~~
- A.** 49 CFR 24.301 Payment for actual reasonable moving and related expenses-residential moves is amended as follows.
1. Paragraph (d) is amended to read:  
Storage, when necessary to accommodate the Department's project schedule, for a period not to exceed 12 months.
  2. Paragraph (f) is deleted from R17-3-301 through R17-3-306.
- B.** 49 CFR 24.303 Payments for actual reasonable moving and related expenses-nonresidential moves is amended as follows.
1. Paragraphs (a)(7) and (a)(13)(iv) are deleted from R17-3-301 through R17-3-306.
  2. Paragraph (a)(8) is amended to read:  
Professional services necessary for:
    - i. Planning the move of the personal property, when the Department prospectively approves the quantity and type of planning,
    - ii. Moving the personal property, and
    - iii. Installing the relocated personal property at the replacement location.
  3. Paragraph (a)(10)(i) is amended to read:  
The market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that the effort is not necessary. When payment for property loss is claimed for goods held for sale, the market value shall be based on the cost of the goods to the business, not the potential selling price.); or
  4. Paragraph (c) is amended to read:  
Self-moves. If the displaced person elects to take full responsibility for the move of the business or farm operation, the Agency may make a payment for the person's moving expenses in an amount not to exceed the lower of two acceptable bids or estimates obtained by the Agency. At the Agency's discretion, a payment for a low cost or uncomplicated move may be based on a single bid or estimate. The Agency has sole authority to determine, in the best interests of the Agency and the displaced business or farm operation, if a self-move will be permitted.
  5. Paragraph (e) is amended to read:  
Advertising signs. The amount of a payment for direct loss of an on-premise advertising sign which is personal property shall be the lesser of:
    - a. (1) The depreciated reproduction cost of the sign, as determined by the Agency, less the proceeds from its sale; or
    - b. (2) The estimated cost of moving the sign, but with no allowance for storage.

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- C.** 49 CFR 24.305(h) Ineligible moving and related expenses is amended to read:  
(h) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency, except as required under A.R.S. § 28-7153.

**R17-3-305. Relocation Assistance; 49 CFR Subpart E – Replacement Housing Payments**

- A.** 49 CFR 24.401 Replacement housing payment for 180-day homeowner-occupants is amended as follows.
1. Paragraph (c)(4)(iii) is amended to read:  
The current market value for residential use of the replacement site (see Appendix A of this part, Sec. 24.401(c)(4)(iii)), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and
  2. Paragraph (d)(3) is amended to read:  
The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located. If a displaced person chooses to buy down the interest rate, the Agency shall:
    - a. Require documents indicating the initial interest rate,
    - b. Require documents indicating the final interest rate, and
    - c. Limit reimbursement to the lower of the amount the displaced person actually paid or the amount qualified under the established market interest rate.
  3. Paragraph (e)(1) is amended to read:  
Closing and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.
  4. Paragraphs (e)(7) and (e)(8) are deleted from R17-3-301 through R17-3-306.
- B.** 49 CFR 24.402 Replacement housing payment for 90-day occupants is amended as follows.
1. Paragraph (b)(2)(i) is amended to read:  
The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the Agency. (For an owner-occupant, use the market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the market rent, unless its use would result in a hardship because of the person's income or other circumstances); or
  2. Paragraph (c)(1) is amended to read:  
Amount of payment. An eligible displaced person who purchases a replacement dwelling is entitled to a downpayment assistance payment in the amount the person would receive under paragraph (b) of this section if the person rented a comparable replacement dwelling.
- C.** 49 CFR 24.403 Additional rules governing replacement housing payments is amended as follows.
1. Paragraph (a)(1) is amended to read:  
At least one comparable replacement dwelling shall be examined. If more than one dwelling is examined, then the payment shall be computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling. An adjustment shall be made to the asking price of any dwelling, to the extent justified by local market data (see also Sec. 24.205(a)(2) and Appendix A of this part). An obviously overpriced dwelling will be ignored.
  2. Paragraph (a)(3) is amended to read:  
If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.
  3. Paragraph (c)(6) is amended to read:  
Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current market value.

**R17-3-306. Relocation Assistance; Appendix A to Part 24 – Additional Information**

- A.** Appendix A, Section 24.9 Recordkeeping and Reports is deleted from R17-3-301 through R17-3-306.
- B.** Appendix A, Subpart B – Real Property Acquisition is deleted from R17-3-301 through R17-3-306.
- C.** Appendix A, Section 24.204(a) General is amended to read:  
This provision requires that no one may be required to move from a dwelling without one comparable replacement dwelling having been made available. In addition, Sec. 24.204(a) requires that, "Where possible, three or more comparable replacement dwellings shall be made available." Only in situations where three comparable replacement dwellings are not available (e.g., when the local housing market does not contain three comparable dwellings) may the Agency make fewer than three referrals.
- D.** Appendix A, Section 24.307 Discretionary Utility Relocation Payments is deleted from R17-3-301 through R17-3-306.
- E.** Appendix A, Section 24.401(c) Price differential is amended to read:

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The provision in Sec. 24.401(c)(4)(iii) to use the current market value for residential use does not mean the Agency must have the property appraised. Any reasonable method for arriving at the market value may be used.

**F.** Appendix A, Section 24.402 Replacement Housing Payment for 90-Day Occupants is deleted from R17-3-301 through R17-3-306.

**G.** Appendix A, Section 24.403 Additional Rules Governing Replacement Housing Payments Section 24.403(a)(1) is amended to read:

The procedure for adjusting the asking price of comparable replacement dwellings requires that the agency provide advisory assistance to the displaced person concerning negotiations so that he or she may enter the market as a knowledgeable buyer. If a displaced person elects to buy the selected comparable, but cannot acquire the property for the adjusted price, it is appropriate to increase the replacement housing payment to the actual purchase amount.